

Decision 02-12-034 December 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under Its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters.

Application 00-06-023  
(Filed June 15, 2000)

**OPINION DENYING PETITION FOR MODIFICATION**

**1. Summary**

Southern California Edison Company (SCE) seeks modification of Decision (D.) 02-06-023 to alter the text of the decision and to eliminate two findings of fact. SCE has not met its burden of showing that the changes are necessary or are justified by the record. The petition is denied.

**2. Modifications Requested by SCE**

In D.02-06-023, the Commission approved an extension of the Gas Cost Incentive Mechanism (GCIM) for Southern California Gas Company (SoCalGas). The Commission also approved a settlement agreed to by SoCalGas, the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) modifying certain terms of the GCIM in order to benefit the five million core ratepayers of SoCalGas. In response to concerns about causes of extreme border price spikes in 2000/2001, the decision also directed the Energy Division to prepare an Order Instituting Investigation for Commission consideration

SCE does not contest extension of the GCIM. It argues, however, that the decision should be modified to more clearly support the Commission's position

in a case before the Federal Energy Commission (FERC). In that proceeding, FERC Docket No. RP00-241-00 (*CPUC v. El Paso Natural Gas Company, et al.*), the Commission has argued that withholding by the El Paso companies and market manipulation contributed to natural gas price spike in 2000-2001. SCE states:

Attorneys for El Paso Natural Gas Company and El Paso Merchant Energy Company have already moved for FERC to take judicial notice of the Decision in this case, erroneously arguing that the decision is inconsistent with the CPUC's and SCE's arguments before the FERC. SCE does not believe that the Decision contradicts the Commission's litigation position before FERC or that the Commission has changed its opinion regarding these issues. To avoid the type of creative misreading engaged in by the El Paso companies, the Commission should clarify that it makes no holding contradictory to its litigation position in FERC Docket No. RP00-241. (SCE Petition to Modify, at 3.)

Similarly, while SCE supports the order directing investigation of price spikes in 2000-2001, it argues that the Commission should specifically name SoCalGas as one of the entities subject to the investigation. As it now stands, D.02-06-023 states:

This inquiry should include, but not be limited to, the activities of all major trading entities in and at the California-Arizona border for the years 2000 and 2001 and the impact of those activities on California's energy crisis. (D.02-06-023, at 23-24.)

Finally, SCE urges deletion of Findings of Fact 9 and 10 in D.02-06-023, contending that those findings are outside the issues identified in the Scoping Memo for this proceeding. As it did below, SCE also argues that those findings are erroneous. Findings of Fact 9 and 10 state:

9. Edison offers no persuasive evidence in this proceeding to show that the GCIM creates perverse incentives for SoCalGas to increase gas prices at the California-Arizona border.
10. Edison's allegation that the core did not properly fill its storage in Year Seven is contradicted by the evidence. (D.02-06-023, at 24.)

### **3. Response to Petition to Modify**

Responding to SCE's petition, SoCalGas argues that there is no inconsistency between D.02-06-023 and the Commission's litigation position in FERC Docket No. RP00-241 concerning the El Paso entities. It points out that the decision now states:

We take official notice that the Commission has argued before the Federal Energy Regulatory Commission (FERC) that the spike in price was caused in large measure by the withholding of capacity on the El Paso system by a marketing affiliate of more than one-third of the pipeline's capacity. The Commission told FERC that spot prices at the California border began returning to more historical levels following the expiration of El Paso's contract with its affiliate in May 2001. (D.02-06-023, at 14 (fn. 1).)

SoCalGas argues that SCE seeks to rewrite D.02-06-023 based on matters other than record evidence in violation of Pub. Util. Code § 1757. It argues that SCE, in effect, "seeks to trade the integrity of the Commission's decision-making process involving SoCalGas for the sake of a perceived advantage in litigation involving El Paso." (SoCalGas Response, at 3.)

SoCalGas states that the investigation directed by the Commission into price spikes in 2000 and 2001 does not require further clarification. The order requires investigation of "the activities of all major trading entities." According to SoCalGas, "major trading entities" involved in border gas prices in 2000-2001

obviously includes SoCalGas, as well as such entities as Pacific Gas & Electric Company and the Southern California Generation Coalition.

As to elimination of Findings of Fact 9 and 10 because they are outside the scope of the Scoping Memo, SoCalGas argues that SCE itself raised the allegations in this proceeding that the findings of fact reject. SoCalGas states that it is a fundamental principle of law that a party that has submitted a matter for determination cannot contend on appeal that the matter was beyond the scope of the issues.<sup>1</sup>

#### **4. Discussion**

In D.02-06-023, the Commission dealt with SCE's contention that hub repayments by noncore customers to SoCalGas were responsible in part for high prices in winter 2000/2001. The decision cited evidence showing that a number of factors influenced winter prices, including unusually cold weather in Southern California and an unprecedented electric generation demand. The decision went on to take official notice of the Commission's argument before FERC that capacity on the El Paso system had been wrongfully withheld by a marketing affiliate of the El Paso companies.

SCE acknowledges that D.02-06-023 is consistent with the Commission's litigation position before FERC, but it urges specific findings of market manipulation and inadequate gas storage in order to buttress contentions in the FERC proceeding. It would be improper to go outside the limited record in this proceeding to follow that course. The record in D.02-06-023 dealt only peripherally with matters at issue in the FERC proceeding, and SCE's allegations

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<sup>1</sup> Citing 9 Witkin, California Procedure (4<sup>th</sup> Ed. 1997), § 384, p. 436; *Estate of Armstrong* (1966), 241 Cal. App.2d 1, 7.

in this proceeding regarding SoCalGas' practices involving hub repayments were found to have been rebutted by evidence presented by SoCalGas, ORA and TURN.

SCE also asks the Commission to clarify that the pending investigation into "the activities of all major trading entities," with respect to the 2000/2001 border gas price spikes, does not exclude SoCalGas. Since SoCalGas is a major trading entity with respect to 2000/2001 border gas prices, the requested change is unnecessary. The scope of the investigation is a matter to be determined by the Commission based on the recommendation of the Energy Division.

Finally, SCE fails to support its contention that Findings of Fact 9 and 10 should be stricken from D.02-06-023 because they are outside the scope of the Scoping Memo. The issues that are the subjects of Findings of Fact 9 and 10 were raised repeatedly by SCE,<sup>2</sup> and findings as to these matters are proper. SCE raised more substantive grounds for deletion of these findings in its comments on the Proposed Decision of the Administrative Law Judge. The Commission there rejected SCE's position, finding that SCE had failed to meet its evidentiary burden. (D.02-06-023, at 22-23.)

Accordingly, for the reasons stated, SCE's petition for modification of D.02-06-023 is denied.

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<sup>2</sup> See SCE Response to Joint Motion for Adoption of Settlement Agreement, at 2-7; prepared direct testimony of Paul R. Carpenter, at 4-5, 8-9, 20-26; and throughout SCE's Initial Brief and Reply Brief.

## **5. Comments on Draft Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on October 9 and October 15, 2002. SoCalGas, ORA and TURN support the draft decision and urge that it be adopted without change. SCE continues to urge modification of D.02-06-023, but it does little more than repeat the arguments that already have been considered in the draft decision.

## **6. Assignment of Proceeding**

Loretta Lynch is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. D.02-06-023 is consistent with the Commission's litigation position before FERC, and no modification of the decision is warranted.
2. D.02-06-023 directs preparation of an inquiry into activities of "all major trading entities" as to 2000/2001 border gas prices, and no modification to single out SoCalGas as one of the trading entities is warranted.
3. Findings of Fact 9 and 10 in D.02-06-023 responded to issues raised by SCE, and deletion of those findings is not warranted.

## **Conclusion of Law**

SCE's petition for modification of D.02-06-023 should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Edison Company's Petition for Modification of Decision 02-06-023 is denied.
2. This proceeding is closed.

This order is effective today.

Dated December 17, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners